MEMORANDUM TO THE SENIOR INTERDEPARTMENTAL GROUP ON INTERNATIONAL ECONOMIC POLICY (SIG/IEP)

Subject: Options For Dealing With Imminent Shipments in Violation of Oil and Gas Export Controls

The legal offices of the Departments of State, Defense, Treasury, Justice, Commerce and the U. S. Trade Representative have, based upon the discussion in the attached memorandum, considered the options available for dealing with an imminent violation of the oil and gas export controls by Dresser/France and John Brown Engineering (a U.K. company).

Under current circumstances, these options* are the following:

I. Administrative actions by the Department of Commerce

-- Commerce can issue an order denying Dresser/France and/or John Brown Engineering access to U.S. origin goods or technology, and can put United States and foreign firms on notice that if they ship U.S. origin goods or technology to the denied parties they, too, are subject to enforcement action, including denial of export privileges

-- The order can be effective immediately or upon the shipment of goods or technology subject to controls

-- The order can apply to

- all goods and technology

- specified categories of goods and technology

II. Political/Diplomatic Initiatives

The U.S. could take a range of political or diplomatic actions as an adjunct to legal or administrative responses to violations of our controls. Options range from bilateral

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* The possibility of an injunction against Dresser and John Brown was considered and rejected. In the case of Dresser, the U.S. parent and its French subsidiary are already taking the actions an injunction would require, and in the case of John Brown we would have no means to enforce an injunction (since John Brown is located in the U.K.) even if one were obtainable.

NSC review completed.

demarches through actions to disrupt substantially bilateral trade and economic relations with countries concerned. For example, the U. S. could amend the Export Administration Regulations to impose new export controls** against a country that takes legal action to compel a violation of the regulations. Any such new controls could be broad or narrow in scope (as to categories of goods and technology). Such changes in export controls would be a major political act; we have never before amended controls as an element of enforcement.

** These would be based on the President's authority, exercised by the Secretary of Commerce, in consultation with the Secretary of State and other appropriate agencies, to control exports for foreign policy reasons. Before imposing any foreign policy controls, the statute requires that consultations be held with affected United States industries regarding foreign availability of the goods or technology to be controlled and the impact of the controls on U.S. industry internationally. The statute also requires that the President determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other means.

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August 23, 1982

Legal Considerations Presented by Soviet Pipeline Export Controls

Part Two: Enforcement

This is the second part of a two part legal analysis of U.S. controls on exports to the Soviet Union of oil and gas equipment and technology. The first memorandum discussed, in general terms, the legal theories on which we will have to rely in enforcing the controls; this memorandum will assess the specific enforcement options which are available to the United States Government and the chances of success in the use of each of these mechanisms against specific targets.

I. Enforcement in Foreign Countries

Since the principal suppliers of equipment to the Soviet gas pipeline are foreign firms -- particularly Alsthom-Atlantique (France), Nuovo Pignone (Italy), AEG-Kanis (West Germany), John Brown Engineering (United Kingdom) and Dresser/France -- this memorandum focuses entirely on enforcement of controls against exports from foreign countries by non-U.S. entities and by foreign subsidiaries of U.S. entities. Under these circumstances, the first question must be whether the controls initiated in December 1981 and June 1982 are in any way enforceable against these companies in the country of their organization or principal office.

Our conclusion is that there is no significant likelihood of enforcing the controls through injunctive action in foreign courts, or of enforcing in foreign courts an injunctive order (assuming one could be obtained) of a United States court. This is true whether the injunction is obtained by the United States, by a United States licensor such as General Electric (GE), or by the United States asserting its rights as a third-party beneficiary of the license agreement.*

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* As discussed elsewhere in this memorandum, GE might be able to enjoin violation of its rights, or to seek damages for such violation, but it is questionable whether the United States would have the right to bring suit on GE's behalf.

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Quite apart from political considerations in each country, the legal obstacles are formidable. In the United Kingdom, compliance with U.S. export controls is now prohibited by an Order issued under the Protection of Trading Interests Act. An affected company (John Brown Engineering) will be able to rely upon that order as a defense against any enforcement in a U.K. court of a U.S. court decree. Even absent such an order, British courts will ordinarily not enforce foreign penal, regulatory or revenue judgments.

In the Continental countries, the situation is technically different. There is no clear statutory basis for a governmental order compelling non-compliance with U.S. export controls, although France is now asserting that it may compel non-compliance under a 1938 requisition statute.** However, several factors would bar obtaining or enforcing an injunction. First, as a general matter, France, Italy and West Germany either do not recognize an injunctive remedy or grant it much more sparingly than the United States; in these countries it would be necessary to proceed with an action for damages, and to prove the monetary amount of damage (to the U.S. licensor or to the U.S.) caused by the violation. Second, in a suit to enforce contractual provisions, the doctrine of ordre public -- broader than its common law equivalent of voidness for contravention of public policy -- might be invoked to deny enforcement of any contract clause which is interpreted as violating national policy or sovereignty. Third, the courts in these states do not enforce foreign penal judgments, and an injunction requiring compliance with the U.S. controls might be viewed as such. Fourth, under principles of contract law, there is room for doubt that a European court would interpret the key contractual provisions as prohibiting European producers from making the shipments. Finally, the contracts between GE and European producers contain broad arbitration clauses. European courts may refuse to take any action until arbitration has been completed.

Accordingly, enforcement of the controls or the licensing contracts in foreign courts must be excluded as a viable option. The balance of this memorandum will deal with mechanisms for enforcement of the controls or the licensing contracts solely within the United States.

** France has formally notified the U.S. that it will shortly take action which will force the shipment to the U.S.S.R. of compressors manufactured by Dresser/France.

II. Enforcement Within the U.S.

There are four mechanisms which might be used to enforce the controls within the United States:

1. Administrative remedies available to the Department of Commerce under the Export Administration Act (EAA);

2. Enforcement by the United States or a U.S. licensor of contractual remedies arising out of the specific terms of a licensing agreement;

3. Injunctive relief against violation of the controls; and

4. Criminal penalties.

Of these, as discussed below, the Commerce Department's administrative remedies are by far the most likely to succeed. Efforts to pursue contract remedies, injunctive relief, or criminal penalties suffer from a variety of problems, including (i) difficulties of obtaining jurisdiction over a foreign defendant; (ii) difficulty of enforcing abroad an order obtained in U.S. court; (iii) the judicially untested basis for the sanction regulations; and (iv) the uncertainties inherent in litigation. Even administrative remedies, it should be noted, may be challenged in the courts, and as to portions of the sanctions, a successful defense is not assured.

A. Contractual Remedies

Because all four of the contracts in question contain clauses in which the foreign company agrees to comply with U.S. export control regulations, reliance on these clauses has been suggested as a way of enforcing the regulations. Nonetheless, it is unlikely that these contractual commitments will provide any effective enforcement opportunities.

GE is, of course, in a prime position to enforce its contracts with the foreign companies in question. We do not know whether GE will pursue its contractual remedies. The Department of Justice is looking further at whether the U.S. could force GE to pursue contractual remedies, but initial research into this option indicates that it is not promising.

Alternatively, the U.S. government could bring suit as a third party beneficiary of the GE contracts to force the contracting parties to obey the export control sections of the contracts by ceasing to ship pipeline parts to the Soviet Union.

Although there is some possibility that such an action could be successful, enforcement of the judgment abroad would, as discussed above, be virtually impossible.***

B. Injunctive Relief

The EAA does not expressly provide for injunctive relief on behalf of the United States. However, 50 U.S.C. App. §2410(g) states that none of the express remedies limit "the availability of other administrative or judicial remedies with respect to violations of this Act, ... or any regulation, order or license ...." See also Wyandotte Co. v. United States, 389 U.S. 191 (1967) (express statutory remedies not exclusive; U.S. may seek declaratory or injunctive relief to protect its interests).

*** Although enforcement would be the major problem, other difficulties are present. Initially, the United States would face the problems of obtaining personal jurisdiction over and the effective service of process on the foreign companies. Jurisdiction requires, in essence, a "presence" in the United States, such as through subsidiaries, agents, offices, etc. A check of the usual commercial sources has not revealed any such presence for the companies involved, although further research is necessary if the decision is made to pursue this type of action. For a third-party beneficiary action to be successful under New York law (the law governing the GE contracts), the United States would have to show that it was an intended beneficiary of the export control clauses in the contract. Although the clauses ultimately work to the benefit of the United States, it is unclear whether this is sufficient. In addition, the foreign companies may have valid defenses under the contracts themselves, ranging from a claim that the export controls to be enforced are invalid under U.S. or international law to a claim that the contracts' force majeure clauses release these companies from a contractual obligation to obey the U.S. controls.

To obtain an injunction against the foreign companies, the United States would have to obtain personal jurisdiction, which, as discussed above, may be difficult with respect to some of the companies involved. It would also be required to show that it would be irreparably injured should the company's action continue, that it is likely to prevail on the merits of the litigation, that there are not substantial countervailing interests, and that an injunction would be in the public interest. The strong public interest in preventing irreparable damage to U.S. foreign policy and the purposes of the EAA would be weighed against the likely ineffectiveness of an injunction (because of the difficulty of enforcement abroad). In addition, questions would be raised as to the legality of the attempted extraterritorial application of U.S. law and the effect of foreign blocking orders, all of which could well make a court reluctant to grant extraordinary relief. Once again, even if the order were issued, enforcement abroad so as to stop the shipments would be virtually impossible.

C. Criminal Penalties

The EAA provides for criminal fines and/or imprisonment. A knowing violation is punishable by a fine of up to five times the value of the export or $50,000, whichever is greater, by imprisonment for up to five years, or both. 50 U.S.C. App. §2410(a). Willful violations by companies may result in fines five times the value of the export, or $1,000,000, whichever is greater. Willful violations by individuals can be punished by a fine of up to $250,000 as well as imprisonment for ten years. 50 U.S.C. App. §2410(b). Criminal prosecutions, of course, involve a heavy burden of proof and would most likely entail more rigorous judicial scrutiny of the legal authority for the underlying regulations. It would also be difficult to obtain personal jurisdiction over those to be charged.

D. Administrative Sanctions

As noted in the first memorandum on this subject, under the EAA, the Commerce Department may enforce the export control regulations by imposing a civil fine or by issuing a "denial order" against a violator. Such an order can deny the violator all access to U.S.-origin goods and technical data, from whatever source, for a specified period of time, or can be more narrowly drawn. Where Commerce believes that violation of controls is imminent, it may obtain a temporary denial order from a hearing officer pending an enforcement investigation, and may do so ex parte. A regular denial order may be imposed only after an administrative proceeding before a hearing officer, and requires notice to, but not personal jurisdiction over, the foreign violator.

Civil fines may be levied in an administrative proceeding, but cannot be collected (in the absence of voluntary payment) except through court action -- and then only if the violator has

assets within the United States against which a judgment may be enforced. Because civil fines are limited to $10,000, far below the value of the contracts, their imposition should be excluded as a practical mechanism to obtain compliance. Nevertheless, a civil fine might be imposed if the threat of more stringent sanctions is defied.

The imposition of a denial order is clearly a more stringent sanction -- assuming that the foreign targets rely on U.S.-origin goods and technical data -- and could be an extremely effective threat. If the threat is defied, however, the denial order could impose a substantial cost on some or all U.S. companies that would otherwise trade with the subject of the order, although a denial order may be framed to limit this secondary effect, such as by restricting its geographical or product scope.

Moreover, a denial order in this context, where the targets are subject to conflicting sovereignties, could bring about the first judicial scrutiny of the regulations issued in December 1981 and June 1982, as well as of the Export Administration Regulations as a whole. As discussed below, such a challenge has an appreciable chance of succeeding against at least one portion of the June 1982 sanctions, and could conceivably call into question the validity of other regulations.

A foreign company affected by a denial order would need to subject itself to U.S. jurisdiction in order to challenge the export control regulations and denial orders thereunder in a U.S. judicial proceeding. To do so would leave the foreign company open to fines, criminal penalties, and injunctive proceedings which can be easily avoided by remaining abroad. On the other hand, several of the companies involved, particularly John Brown Engineering, stand to be seriously injured by a denial order. Although each company would have to weigh the advantages and disadvantages of bringing a challenge in U. S. courts, we believe it likely that at least one company will in fact challenge a denial order in this country. Whether foreigners would bring actions here to challenge the regulations if no denial orders were issued is more questionable.

A foreign or a domestic plaintiff could challenge either the regulations themselves or a denial order, basing its claim in part on the alleged invalidity of the regulations.*

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* Administrative challenges to the regulations in the course of any denial order proceeding are to be expected. The bases of such challenges would be similar to the grounds for judicial challenge. Such challenges are much less likely to succeed than are judicial challenges.

Because there have been very few cases challenging Export Administration Regulations and none challenging denial orders, it is impossible to say with a high degree of confidence exactly which claims are likely to be asserted and whether they would be successful. However, we predict that a complaining party would attack the adequacy of the statutory support for the regulations, their validity under international law, or the jurisdiction of the Commerce Department over the company.

As discussed in the first memorandum on this subject, some of the sanctions that can be imposed are more vulnerable to challenge than others. The sanctions against re-exportation of products made abroad using U.S. technology that had not been restricted at the time of its export from the United States are by far the most vulnerable. Section 6(a) of the Act, 50 U.S.C. App. §2405(a), the section under which these regulations were issued, authorizes the President to "prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States". In deciding whether these regulations are authorized by §6(a), a U.S. court would probably apply the presumption that, absent clear indications to the contrary, Congress would not have intended that §6 conflict with principles of international law. On the other hand, if the court found that the intent of Congress to contravene principles or international law were clear, it would enforce that intent absent contrary constitutional considerations. F.T.C. v. Compagnie de Saint-Gobain-Pont-A-Mousson, 636 F.2d 1300 (D.C. Cir. 1980).

The position of the State Department has been that international law imposes a requirement of "reasonableness" on attempts by a state to regulate conduct outside its borders. Some of the factors that are weighed in determining whether an attempt to regulate external conduct is reasonable are the place(s) where the conduct takes place, the place(s) where the conduct has effects, the national, residential, and economic links between the regulating state and the parties regulated, the degree to which the type of regulation is accepted as a matter of international law, the existence of justified expectations and interests hurt by the regulation, the respective interests of the regulating state and the states affected by the regulation in the conduct regulated, and the likelihood of conflict with regulation by other states. See Restatement of the Foreign Relations Law of the United States (Revised) §403 (Tent. Draft No. 2 1981). In addition, a country asserting that its laws are enforceable extraterritorially must show some basis for its jurisdiction, such as its control over a company located abroad, or a territorial connection to an exported product.

The validity as a matter of international law of attempts retroactively to impose restrictions on the export from a foreign country of goods produced by a foreign company with technology obtained from a U.S. source is subject to question. Evidence

that Congress intended to authorize such restrictions is weak. It is possible to construct legal defenses of this portion of the regulations based on the continuing nature of a license to use technology. However, given the above-mentioned considerations of international law, it is possible and indeed likely that a U.S. court would interpret the statutory language "goods, technology, or other information subject to the jurisdiction of the United States" to be inapplicable to goods produced abroad using technology that left the United States at a time when no conditions on its use existed.

As discussed in the first memorandum, the other portions of the regulations -- those retroactively covering re-export of products made abroad with U.S. components and the actions of foreign subsidiaries of U.S. companies -- have a firm foundation in the Export Administration Act and twenty years of regulations and enforcement under it and its predecessors. However, they are still highly controversial under international law. Although these regulations therefore have a strong chance of being upheld against challenge, enforcement abroad, as well as successful defense in international tribunals, is far less certain.

The U.S. export control system has functioned for over thirty years without significant legal challenge. But vigorous enforcement of the June 1982 sanctions, particularly through broad denial orders, could subject the system to serious judicial scrutiny for the first time. As discussed above, the sanctions relating to goods made abroad with previously unregulated U.S. technology are particularly vulnerable. Although the other portions of the regulations are far more likely to survive intact, there remains the risk inherent in any major case of first impression involving difficult issues that one or more of the courts involved might go further toward invalidating the regulations than we believe to be justified.

III. Enforcement Against Particular Companies

Although many European companies, possibly numbering in the hundreds, are affected by the sanctions, the situations involving four of the large foreign companies and a French subsidiary of a United States company illustrate the issues raised.

A. Alsthom-Atlantique

Of the West European companies supplying compressor-station equipment for the pipeline, Alsthom is the only one we know of licensed to produce rotors under a contract with GE. Alsthom's majority shareholder is a state-owned firm, and the French Government thus has direct control of Alsthom's activities. Its pipeline contract calls for delivery of 40 turbine rotors beginning in October, 1983. Accordingly, Alsthom's possible violation of U.S. export controls is less imminent than that of some of the other companies described below.

There have been assertions in the press and elsewhere that the GE/Alsthom license agreement provides the U.S. Government a legal basis for preventing Alsthom from meeting its pipeline obligations. The basic legal issues that would arise in such an action are discussed in section II.A., above. The particular provisions of the contract, under which either GE or the U.S. would bring an action, are discussed below.

Article VII.C of the GE/Alsthom licensing agreement provides that Alsthom will keep itself fully informed of, and comply with, U.S. export control regulations (as amended), and Article V.B excuses either party for failures in performance caused by the laws of the country where the party is located (in effect, a limited force majeure clause). Finally, Article XII.C of the contract permits GE to terminate the contract if Alsthom fails substantially to perform its contractual obligations.

These clauses, read together, appear to provide GE with two avenues to enforce the requirements imposed by U.S. export controls. First, GE might, without terminating its contract, sue Alsthom for breaching its patent license on the theory that Alsthom is exceeding the terms of the license by violating U.S. export controls on the products of the GE patent. Alternatively, GE could terminate the contract and pursue a patent infringement claim against Alsthom if Alsthom continued to use patented technology. However, it is likely that, should GE attempt to exercise such remedies, Alsthom would defend on the grounds that the export controls were illegal, and that therefore there had been no breach of contract and no patent infringement. Such litigation could lead to a court decision on the validity of the weakest of the regulations in a suit in which the United States is not a primary party. We have no way of knowing the likelihood of GE's deciding to bring an action to enforce the contract.

It is not certain that Alsthom would enter the U.S. to challenge the controls or any sanctions imposed by the Commerce Department, but should a denial order applying to Alsthom be issued, a U.S. exporter to Alsthom might challenge in the U.S. courts the validity of the regulations on which the denial order would be based. Such a challenge would be a significant threat to the technology portion of the June 1982 regulations.

Finally, if Alsthom decided to challenge a denial order in the U.S. courts, it might be able to avoid sanctions by invoking the foreign sovereign compulsion defense -- a claim that it was forced by its Government to violate U.S. controls. This defense has had limited success in cases outside the antitrust area. The foreign sovereign compulsion argument would be less likely to succeed as the basis for a challenge to a denial order than it would as a defense to civil fines or criminal penalties, because a court may view a denial order as the withdrawal of a privilege rather than the imposition of punishment.

B. John Brown Engineering

In response to a U.K. order, John Brown Engineering ("JBE"), a member of the John Brown group, has announced that it will begin shipping this month the turbines containing GE rotors that it has on hand. Accordingly, JBE is likely to be an early violator of U.S. export controls. The JBE-GE contract requires compliance with U.S. export controls as they are or may be in force.

Because JBE relies on GE components for its turbines, an administrative denial order probably would force the company to cancel non-Soviet orders for turbines stretching out over the next two years. Accordingly, JBE is particularly vulnerable to administrative enforcement sanctions.

The effect of a denial order on JBE would be so severe that the company would almost certainly challenge it both administratively and judicially. As the company is re-exporting goods made with U.S. components, the challenge would have to be against the portion of the regulations dealing with re-exports of U.S. goods, an area over which the U.S. has long asserted continuing control, making JBE's challenge more difficult than Aslthom's.

On the other hand, the official U.K. order to disregard U.S. export controls may be useful to JBE if it challenges the imposition of administrative sanctions. Although the efficacy of the defense in U.S. courts against U.S. sanctions is not certain, JBE would have a clear defense in U.K. courts against either a contract action or an action to enforce a judgment of a U.S. court.

C. Nuovo Pignone

A subsidiary of the Italian national energy agency, ENI, Nuovo Pignone is the general contractor for 19 of the 41 compressor stations and 57 of the 125 turbines and is covered by the December 1981 regulations as a re-exporter of components purchased from GE. Neither the company nor its government have stated their intentions, although delivery is scheduled to begin this summer.

Italy has not yet ordered Nuovo Pignone to disregard U.S. export controls, but it has stated that public policy requires that Italian companies honor their contracts. Accordingly, while Nuovo Pignone cannot now raise the "foreign sovereign compulsion" defense, an enforcement action in Italian courts is not likely to be successful. The Nuovo Pignone contract with GE is similar to the JBE and AEG contracts, requiring compliance with U.S. export controls. As in the case of JBE and AEG, the legal grounds in support of the controls are stronger than those underpinning the controls on Alsthom. The effect of a denial order on Nuovo Pignone is not known. The Department of Commerce is currently

researching the extent to which the company imports U.S. products and technology.

D. AEG-Kanis

With a contract to provide 42 of the 120 25-MW turbines for line stations plus the five 10-MW units for the head pumping stations beginning this month, the West German company is particularly anxious to avoid losing its turbine contract. Its parent AEG-Telefunken is virtually bankrupt. Like Nuovo Pignone, AEG-Kanis has not been ordered by its government to disregard U.S. export controls, although it has been told that honoring the contract is in the public interest. Also like Nuovo Pignone, AEG-Kanis is required by the terms of its contract with GE to comply with U.S. export controls.

AEG-Kanis is reported to have an extensive network of U.S. goods and technology agreements. In addition, AEG-Telefunken has several U.S. subsidiaries and is presumably anxious to avoid damaging its U.S. interests. For this reason, AEG-Kanis is likely to be vulnerable to a denial order. The Commerce Department is also researching the extent to which AEG-Kanis imports U.S. products and technology.

E. Dresser/France

Dresser/France has a contract to produce over twenty compressors for the pipeline. As a wholly-owned French subsidiary of a U.S. company which has been told by the French Government that the French will take action to force the shipment of the compressors, Dresser/France is in the middle of a difficult French-U.S. jurisdictional tug-of-war.

Dresser Industries, parent of Dresser/France, has apparently ordered the subsidiary to obey the export controls and not to ship. Dresser/France has reportedly told its freight forwarder not to ship. Thus, the companies within any control of the U.S. appear to have done all they can do to stop shipment, and neither an injunction to force them to do what they have already done nor issuance of a denial order to punish them for what they are trying to prevent appears reasonable. However, should the French Government seize Dresser/France to force the shipment or should Dresser change its position, consideration should be given to issuing a denial order against Dresser/France.

F. Other Companies

Other foreign subsidiaries of U.S. companies involved in the pipeline and subject to U.S. export controls include American Air Filters, Baker Oil Tools, and Smith International in the U.K., and Rockwell Industries of France. There are also many independent foreign companies involved. Although many have

insignificant contracts, others, such as Cameron Iron Works, which has contracts worth $100 million, have a substantial stake in how the U.S. proceeds.

IV. Foreign Repercussions of Enforcement

To the extent the U.S. Government is successful in applying administrative or other sanctions to particular foreign firms whose exports are prohibited by pipeline controls, it is possible that foreign governments with jurisdiction over those firms may feel compelled to take retaliatory measures. Beyond unilateral measures against U.S. firms doing business in those countries, these countries might challenge U.S. sanctions under the General Agreement on Tariffs and Trade (GATT).

GATT contains, subject to numerous exceptions, a broad prohibition against "restrictions" on the exportation of articles to any other contracting party (Art. XI). Another provision requires that, with respect to "all rules and formalities" regarding exportation, most-favored-nation treatment shall be applied to articles destined for another party (Art. I).

It is arguable that the basic restrictions on the shipment of certain articles to the U.S.S.R. would not violate these provisions, since the U.S.S.R. is not a contracting party to GATT. However, if sanctions limiting U.S. exports, either in the form of denial orders or by extension of the export licensing regulations to GATT signatories, should be applied to trade with companies which did not comply with the basic restrictions, the GATT prohibition against "restrictions" and the most-favored-nation clause in GATT would appear to be applicable, unless the sanctions could be brought within a GATT exception.

Apparently the only exception on which the United States might rely would be Article XXI, which permits a contracting party to take action "which it considers necessary for protection of its essential security interests" (a) relating to fissionable materials, (b) traffic in munitions or "other goods and materials... carried on directly or indirectly for ... supplying a military establishment," or (c) "taken in time of war or other emergency in international relations." Although the United States could argue that the basic restrictions could be considered as coming under (b) or (c), such an argument would probably be subject to challenge if applied to sanctions imposed to enforce the basic restrictions. Moreover, although in some respects Article XXI is quite broad, it has rarely been relied on in GATT. For the U.S. to give it a broad interpretation in the present situation would open the possibility of other contracting parties invoking the article more frequently, thus weakening the application of basic GATT provisions.

The dispute settlement provisions of GATT provide that complaint can be brought on the basis of nullification and impairment "of any benefit... under the Agreement". Such a

complaint can result in authorized retaliation whether or not the action complained of conflicts with the provisions of GATT. This could include a complaint against the basic restriction relating to the Soviet pipeline as well as actions directed at companies not complying with such restrictions. Moreover, it could apply without the need for a finding that our action complained of was not justified under the security exception in Article XXI.

Finally, the U.S. is planning, at the GATT Ministerial in November, to propose an extension of GATT into other areas, including services. An attempt by the U.S. to justify the above restrictive actions by a broad interpretation of the security exception would be likely to have a limiting effect on ability of the U.S. to obtain agreement regarding such extension.